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VIA EFILING AND HAND DELIVERY

The Honorable Joseph J. Farnan, Jr.
USDC for the District of Delaware
844 King Street
Wilmington, DE 19801

Re: *Affymetrix, Inc. v. Illumina, Inc.*, D. Del., C.A. No. 04-901-JJF

Your Honor:

Illumina writes to very briefly respond to an argument made in Affymetrix's letter of yesterday that included a misleading quotation from a prior conference with Your Honor. Affymetrix included a quotation in its letter that implies that the Court had decided at the prior conference to try the willfulness and invalidity issues in the same trial, but Affymetrix did not include the discussion from later in that same conference that clarified that this was not the case:

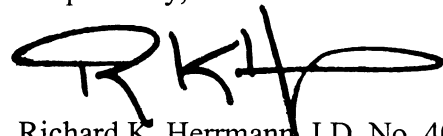
Counsel for Illumina: Can I take up with you whether willfulness should be at phase two or phase three later?

Court: Oh, sure. I'm not fully engaged to where that ought to go. I just don't want to get it in the infringement and damages phase because of that overlap....

(2/8/07 Tr. at 57). Thus, contrary to Affymetrix's misleading quotation, the Court clearly reserved the discussion on when willfulness should be tried until a later time, and did not decide this issue at the prior conference. In any event, as discussed in Illumina's letter of yesterday, the Federal Circuit's *Seagate* decision calls into question whether Affymetrix still has any willfulness case, and at the very least further complicates the ability to try invalidity and willfulness together in the same trial.

We look forward to discussing these and other issues at the status conference tomorrow.

Respectfully,



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cc: MaryEllen Noreika, Esq. (via email & hand delivery)
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